

Appl. No. : 09/557,234
Filed : April 24, 2000

REMARKS

The Cited Prior Art Does Not Teach or Suggest All of the Limitations Recited in the Claims

The Examiner rejected Claims 36-38 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Des. 425,603 to Guo in view of Kimbrew-Walter Roses “Jet-All” sprayer. The Examiner rejected Claims 19-28, 33-35, 39 and 40 under 35 U.S.C. § 103(a) as unpatentable over the Guo/Jet-all combination and in further view of U.S. Patent No. 3,737,105 to Arnold.

Applicant continues to respectfully traverse the rejections. More specifically, Applicant contends that there is no teaching or suggestion in the references to combine the Guo and Jet-All references, and further that there is no teaching or suggestion in the references to combine the Arnold reference to any Guo/Jet-All combination, or vice versa. Arguments in opposition to such combinations are discussed in prior responses to Office Actions.

Even if the combinations proposed by the Examiner are made, they do not teach or suggest all of the limitations of the claims, and the Examiner’s obviousness arguments and conclusions are incorrect.

By this document, Applicant reasserts each of the arguments presented in its previous response, and wishes to specifically discuss some of the factual assertions made by the Examiner in the Office Action mailed September 24, 2004.

The Examiner’s Factual Assertions Are Not Supported

In her arguments in the Office Action mailed September 24, 2004, the Examiner made certain factual assertions that are not supported. For example, the Examiner states, “It is human nature to orient a device in a desired manner to fit the space constraints of the situation.” (Office Action, page 8). It is not completely clear what the Examiner means by this statement. Further, the Examiner points to no reference to support or explain this statement declaring what is human nature. The Examiner also made other unsupported factual assertions in connection with the just-discussed determination of human nature: “Orientation is relative to the location of the application area. If the tree/bush is tall the user would orient the device to a higher elevation. If the tree/bush was very wide the user would orient the device and extend it horizontally to reach the center of the tree/bush.” (Office Action, page 8). Again, it is not precisely clear what the Examiner is trying to say, and the Examiner points to no reference to support or explain these factual “findings”.

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It appears that the Examiner is attempting to establish these statements as factual findings, and wishes to effectively take Official Notice of the above statements. Applicant respectfully traverses the findings indicated by these statements. The Examiner is reminded that, per M.P.E.P. §2144.04(C), the Examiner must provide documentary evidence to support such fact-finding statements.

Applicant contends that it is not common knowledge, well-known in the art, or "human nature" to provide a device and use it in a matter as claimed. As for orienting devices relative to plants, Applicant respectfully contends that the Examiner is not qualified to declare human nature, or what humans will do. In fact, despite human nature, some people have problems learning and applying the claimed method even though Applicant includes detailed graphical instructions when selling the product associated with the claimed invention. (See Declaration and Exhibits A-C filed by Applicant on November 26, 2003; see particularly user discussions in Exhibit B).

If the Examiner wishes to base the rejection of the claims wholly or partially upon the above "findings", both fairness and the M.P.E.P. require that the Examiner provide documentary support if the rejection is to be maintained.

CONCLUSION

Applicant continues to contend that the rejections and objections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Respectfully submitted,

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